

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SENATE CONCURRENT RESOLUTION 1019

A CONCURRENT RESOLUTION

ENACTING AND ORDERING THE SUBMISSION TO THE PEOPLE OF A MEASURE RELATING TO
PRIVATE PROPERTY RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the Senate of the State of Arizona, the House of
2 Representatives concurring:

3 1. Under the power of referendum, as vested in the Legislature, the
4 following measure, relating to private property rights, is enacted to become
5 valid as a law if approved by the voters and on proclamation of the Governor:

6 AN ACT

7 AMENDING TITLE 12, CHAPTER 8, ARIZONA REVISED STATUTES, BY
8 ADDING ARTICLE 2.1; AMENDING SECTION 38-431.03, ARIZONA REVISED
9 STATUTES; RELATING TO THE PRIVATE PROPERTY RIGHTS PROTECTION
10 ACT.

11 Be it enacted by the Legislature of the State of Arizona:

12 Section 1. Findings and legislative purpose

13 The Legislature finds and declares that:

14 1. All property rights are fundamental rights and all
15 people have inalienable rights, including the right to acquire,
16 possess, control and protect property.

17 2. Article II, section 17, Constitution of Arizona,
18 declares in no uncertain terms that private property shall not
19 be taken for private use and further provides that no person
20 shall be deprived of property without due process of law. It
21 further prohibits property from being taken or damaged without
22 just compensation.

23 3. Notwithstanding these clear constitutional rights,
24 municipal governments of Arizona have encroached on the rights
25 of private citizens to own and use their property, requiring the
26 people of Arizona to seek redress in our state and federal
27 courts, which may not always adequately protect their private
28 property rights as demanded by the state and federal
29 Constitutions.

30 4. Federal and state courts have at times allowed state
31 and local governments to impose significant prohibitions and
32 restrictions on the use of private property without properly
33 compensating the owner for the economic loss of value to that
34 property.

35 5. Even when property is taken for a valid public use,
36 the judicial processes available to property owners to obtain
37 just compensation are unfairly burdensome and costly.

38 6. This act ensures that Arizona citizens do not lose
39 their homes or property or lose the value of their homes or
40 property without just compensation. If a public body takes or
41 regulates the use of private property, it is the intent of the
42 Legislature and the people of this state that the owner receive
43 just compensation, either by negotiation or by an efficient and
44 fair judicial process.

1 Sec. 2. Title 12, chapter 8, Arizona Revised Statutes, is
2 amended by adding article 2.1, to read:

3 ARTICLE 2.1. PRIVATE PROPERTY RIGHTS PROTECTION ACT

4 12-1131. Definitions

5 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

6 1. "FAIR MARKET VALUE" MEANS THE MOST LIKELY PRICE
7 ESTIMATED IN TERMS OF MONEY THAT THE LAND WOULD BRING IF EXPOSED
8 FOR SALE ON THE OPEN MARKET WITH REASONABLE TIME ALLOWED IN
9 WHICH TO FIND A PURCHASER, BUYING WITH KNOWLEDGE OF ALL THE USES
10 AND PURPOSES TO WHICH IT IS ADAPTED AND FOR WHICH IT IS CAPABLE.

11 2. "JUST COMPENSATION" MEANS:

12 (a) FOR THE PURPOSES OF A TAKING, THE SUM OF MONEY THAT
13 IS NECESSARY TO PLACE THE PROPERTY OWNER BACK IN THE SAME
14 POSITION, MONETARILY AND WITHOUT ANY GOVERNMENTAL OFFSETS, AS IF
15 THE PROPERTY OR PROPERTY INTEREST HAD NEVER BEEN TAKEN. JUST
16 COMPENSATION INCLUDES ALL REASONABLE COSTS AND EXPENSES ACTUALLY
17 INCURRED.

18 (b) FOR THE PURPOSES OF AN ACTION FOR DIMINUTION IN
19 VALUE, THE SUM OF MONEY THAT IS EQUAL TO THE REDUCTION IN FAIR
20 MARKET VALUE OF THE PROPERTY RESULTING FROM THE ENACTMENT OR
21 ENFORCEMENT OF THE LAND USE LAW AS OF THE DATE OF ENACTMENT OF
22 THE LAND USE LAW. JUST COMPENSATION INCLUDES ALL REASONABLE
23 COSTS AND EXPENSES ACTUALLY INCURRED. COMPENSATION FOR THE
24 ENACTMENT OR ENFORCEMENT OF ANY LAND USE LAW SHALL BE MEASURED
25 AS OF THE DATE A WRITTEN DEMAND IS MADE BY THE OWNER.

26 3. "LAND USE LAW" MEANS ANY STATUTE, RULE, ORDINANCE OR
27 LAW THAT REGULATES THE USE OR DIVISION OF LAND OR ANY INTEREST
28 IN LAND OR THAT REGULATES ACCEPTED FARMING AND FOREST PRACTICES,
29 INCLUDING ZONING ORDINANCES THAT ARE ENACTED BY THIS STATE OR A
30 POLITICAL SUBDIVISION OF THIS STATE.

31 4. "OWNER" MEANS THE HOLDER OF FEE TITLE TO THE SUBJECT
32 REAL PROPERTY.

33 5. "PUBLIC USE":

34 (a) MEANS ANY OF THE FOLLOWING:

35 (i) THE POSSESSION, OCCUPATION AND ENJOYMENT OF THE LAND
36 BY THE GENERAL PUBLIC OR BY PUBLIC AGENCIES.

37 (ii) THE USE OF LAND FOR THE CREATION OR FUNCTIONING OF
38 UTILITIES.

39 (iii) THE ACQUISITION OF PROPERTY TO CURE A DIRECT
40 HARMFUL EFFECT OF THE CURRENT USE OF THE LAND, INCLUDING THE
41 REMOVAL OF STRUCTURES THAT ARE BEYOND REPAIR OR THAT ARE UNFIT
42 FOR HUMAN HABITATION OR USE.

43 (iv) THE ACQUISITION OF ABANDONED PROPERTY.

1 (b) DOES NOT INCLUDE THE PUBLIC BENEFITS OF ECONOMIC
2 DEVELOPMENT, INCLUDING AN INCREASE IN TAX BASE, TAX REVENUES,
3 EMPLOYMENT OR GENERAL ECONOMIC HEALTH.

4 6. "TAKEN" AND "TAKING" MEANS THE TRANSFER OF OWNERSHIP,
5 CONTROL OR USE FROM A PRIVATE PROPERTY OWNER TO THIS STATE OR A
6 POLITICAL SUBDIVISION OF THIS STATE OR TO ANY PERSON OTHER THAN
7 THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

8 12-1132. Property may be taken only for public use

9 EMINENT DOMAIN MAY BE EXERCISED ONLY IF THE USE OF EMINENT
10 DOMAIN IS SPECIFICALLY AUTHORIZED BY THIS STATE AND IS FOR A
11 PUBLIC USE AS DEFINED IN SECTION 12-1131.

12 12-1133. Burden of proof

13 A. IN ALL EMINENT DOMAIN ACTIONS THE JUDICIARY SHALL
14 COMPLY WITH THE STATE CONSTITUTION'S MANDATE THAT WHENEVER AN
15 ATTEMPT IS MADE TO TAKE PRIVATE PROPERTY FOR A USE ALLEGED TO BE
16 PUBLIC, THE QUESTION WHETHER THE CONTEMPLATED USE BE REALLY
17 PUBLIC SHALL BE A JUDICIAL QUESTION, AND DETERMINED AS SUCH
18 WITHOUT REGARD TO ANY LEGISLATIVE ASSERTION THAT THE USE IS
19 PUBLIC.

20 B. IN ANY EMINENT DOMAIN ACTION FOR THE PURPOSE OF SLUM
21 CLEARANCE OR REDEVELOPMENT, THE STATE OR POLITICAL SUBDIVISION
22 OF THIS STATE SHALL ESTABLISH BY CLEAR AND CONVINCING EVIDENCE
23 THAT EACH PARCEL IS NECESSARY TO ELIMINATE A DIRECT THREAT TO
24 PUBLIC HEALTH OR SAFETY CAUSED BY THE PROPERTY IN ITS CURRENT
25 CONDITION, INCLUDING THE REMOVAL OF STRUCTURES THAT ARE BEYOND
26 REPAIR OR THAT ARE UNFIT FOR HUMAN HABITATION OR USE, OR TO
27 ACQUIRE ABANDONED PROPERTY.

28 12-1134. Right to jury

29 IN AN EMINENT DOMAIN ACTION FOR THE PURPOSE OF SLUM
30 CLEARANCE OR REDEVELOPMENT, AT THE PROPERTY OWNER'S ELECTION,
31 THE OWNER IS ENTITLED TO HAVE A JURY SERVE AS THE FINDER OF FACT
32 IN A HEARING OR TRIAL TO DETERMINE WHETHER THE TAKING IS
33 ACTUALLY FOR A PUBLIC USE. IF THE OWNER ELECTS A JURY AS THE
34 FINDER OF FACT TO DETERMINE WHETHER THE TAKING IS FOR A PUBLIC
35 USE, THE JURY TRIAL SHALL BE SET TO OCCUR WITHIN NINETY DAYS
36 AFTER THE OWNER FILES AN ANSWER.

37 12-1135. Just compensation; slum clearance and
38 redevelopment

39 IN ANY EMINENT DOMAIN ACTION FOR THE PURPOSE OF SLUM
40 CLEARANCE AND REDEVELOPMENT, IF PRIVATE PROPERTY CONSISTING OF
41 AN INDIVIDUAL'S PRINCIPAL RESIDENCE IS TAKEN, THE PROPERTY OWNER
42 SHALL BE PROVIDED A COMPARABLE REPLACEMENT DWELLING THAT IS
43 DECENT, SAFE AND SANITARY AS DEFINED IN STATE AND FEDERAL
44 RELOCATION LAWS AND REGULATIONS. AT THE OWNER'S ELECTION, IF
45 MONETARY COMPENSATION IS DESIRED IN LIEU OF A REPLACEMENT

1 DWELLING, THE AMOUNT OF JUST COMPENSATION THAT IS MADE AND
2 DETERMINED FOR THAT TAKING SHALL NOT BE LESS THAN THE SUM OF
3 MONEY THAT WOULD BE NECESSARY TO PURCHASE A COMPARABLE
4 REPLACEMENT DWELLING THAT IS DECENT, SAFE AND SANITARY AS
5 DEFINED IN STATE AND FEDERAL RELOCATION LAWS AND REGULATIONS.

6 12-1136. Diminution in value: just compensation

7 A. IF THE USE OR DIVISION OF PRIVATE REAL PROPERTY IS
8 REDUCED BY THE ENACTMENT OR ENFORCEMENT OF ANY LAND USE LAW
9 AFTER THE DATE OF ACQUISITION BY THE OWNER OF THE PROPERTY IN A
10 MANNER THAT REDUCES THE FAIR MARKET VALUE OF THE PROPERTY, THE
11 OWNER IS ENTITLED TO JUST COMPENSATION AND SHALL NOT BE REQUIRED
12 TO FIRST SUBMIT A LAND USE APPLICATION TO REMOVE, MODIFY, VARY
13 OR OTHERWISE ALTER THE APPLICATION OF THE LAND USE LAW TO THE
14 OWNER'S PROPERTY AS A PREREQUISITE TO DEMANDING OR RECEIVING
15 JUST COMPENSATION UNDER THIS ARTICLE.

16 B. THIS SECTION DOES NOT APPLY TO LAND USE LAWS THAT:

17 1. LIMIT OR PROHIBIT A USE OR DIVISION OF REAL PROPERTY
18 FOR THE PROTECTION OF THE PUBLIC'S HEALTH AND SAFETY, INCLUDING
19 RULES AND REGULATIONS RELATING TO FIRE AND BUILDING CODES,
20 HEALTH AND SANITATION, TRANSPORTATION OR TRAFFIC CONTROL, SOLID
21 OR HAZARDOUS WASTE AND POLLUTION CONTROL.

22 2. LIMIT OR PROHIBIT A USE OR DIVISION OF REAL PROPERTY
23 COMMONLY AND HISTORICALLY RECOGNIZED AS A PUBLIC NUISANCE UNDER
24 COMMON LAW.

25 3. ARE REQUIRED BY FEDERAL LAW.

26 4. LIMIT OR PROHIBIT THE USE OR DIVISION OF A PROPERTY
27 FOR THE PURPOSE OF HOUSING SEX OFFENDERS, SELLING ILLEGAL DRUGS,
28 PORNOGRAPHY OR OBSCENITY AND ADULT ORIENTED BUSINESSES IF THE
29 LAND USE LAWS ARE CONSISTENT WITH THE CONSTITUTIONS OF THIS
30 STATE AND THE UNITED STATES.

31 5. ESTABLISH LOCATIONS FOR UTILITY FACILITIES.

32 6. DO NOT DIRECTLY REGULATE AN OWNER'S LAND.

33 7. APPLY TO PROPERTY LOCATED WITHIN A HIGH NOISE OR
34 ACCIDENT POTENTIAL ZONE AS DEFINED IN SECTION 28-8461.

35 8. ARE ENACTED BEFORE THE EFFECTIVE DATE OF THIS SECTION.

36 C. THE STATE OR POLITICAL SUBDIVISION OF THIS STATE
37 ENACTING OR ENFORCING A LAND USE LAW HAS THE BURDEN OF
38 DEMONSTRATING THAT A LAND USE LAW IS EXEMPT PURSUANT TO
39 SUBSECTION B OF THIS SECTION.

40 D. IF A LAND USE LAW CONTINUES TO APPLY TO PRIVATE REAL
41 PROPERTY MORE THAN NINETY DAYS AFTER THE OWNER OF THE PROPERTY
42 MAKES A WRITTEN DEMAND IN A SPECIFIC AMOUNT FOR JUST
43 COMPENSATION TO THE STATE OR POLITICAL SUBDIVISION OF THIS STATE
44 ENACTING OR ENFORCING THE LAND USE LAW, THE OWNER HAS A CAUSE OF
45 ACTION FOR JUST COMPENSATION IN A COURT IN THE COUNTY IN WHICH

1 THE PROPERTY IS LOCATED, UNLESS THE STATE OR POLITICAL
2 SUBDIVISION OF THIS STATE AND THE OWNER REACH AN AGREEMENT ON
3 THE AMOUNT OF JUST COMPENSATION TO BE PAID OR THE PUBLIC BODY
4 AMENDS, REPEALS OR ISSUES TO THE LANDOWNER A BINDING WAIVER OF
5 ENFORCEMENT OF THE LAND USE LAW ON THE OWNER'S SPECIFIC PARCEL.

6 E. ANY DEMAND FOR LANDOWNER RELIEF OR ANY WAIVER THAT IS
7 GRANTED IN LIEU OF COMPENSATION RUNS WITH THE LAND.

8 F. THE REMEDY PROVIDED BY THIS SECTION IS IN ADDITION TO
9 ANY OTHER REMEDY THAT IS PROVIDED UNDER THE CONSTITUTION OF THIS
10 STATE, THE UNITED STATES CONSTITUTION OR THE LAWS OF THIS STATE
11 AND IS NOT INTENDED TO MODIFY OR REPLACE ANY OTHER REMEDY.

12 G. THIS SECTION DOES NOT PROHIBIT THIS STATE OR ANY
13 POLITICAL SUBDIVISION OF THIS STATE FROM REACHING AN AGREEMENT
14 WITH A PRIVATE PROPERTY OWNER REGARDING ANY PROPOSED ACTION BY
15 THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

16 12-1137. Attorney fees and costs

17 A. A PROPERTY OWNER IS NOT LIABLE TO THIS STATE OR ANY
18 POLITICAL SUBDIVISION OF THIS STATE FOR ATTORNEY FEES OR COSTS
19 IN ANY EMINENT DOMAIN ACTION OR IN ANY ACTION FOR DIMINUTION IN
20 VALUE.

21 B. A PROPERTY OWNER SHALL BE AWARDED REASONABLE ATTORNEY
22 FEES, COSTS AND EXPENSES IN EVERY EMINENT DOMAIN ACTION IN WHICH
23 THE TAKING IS FOUND TO BE NOT FOR A PUBLIC USE.

24 C. IN AN EMINENT DOMAIN ACTION FOR THE PURPOSE OF SLUM
25 CLEARANCE OR REDEVELOPMENT, THE COURT SHALL AWARD ATTORNEY FEES
26 AND OTHER EXPENSES TO THE PROPERTY OWNER IF THE FINAL AWARD IS
27 AT LEAST TWENTY PER CENT GREATER THAN THIS STATE'S OR ANY
28 POLITICAL SUBDIVISION OF THIS STATE'S FINAL WRITTEN PRETRIAL
29 OFFER AND MAY AWARD ATTORNEY FEES AND OTHER EXPENSES IN OTHER
30 CIRCUMSTANCES. FOR THE PURPOSES OF THIS SUBSECTION, "FEES AND
31 OTHER EXPENSES" MEANS THE REASONABLE EXPENSES OF EXPERT
32 WITNESSES, THE REASONABLE COST OF ANY STUDY, ANALYSIS,
33 ENGINEERING REPORT, TEST OR PROJECT THAT THE COURT FINDS TO BE
34 DIRECTLY RELATED TO AND NECESSARY FOR THE PRESENTATION OF THE
35 PARTY'S CASE AND REASONABLE AND NECESSARY ATTORNEY FEES.

36 D. A PREVAILING PROPERTY OWNER IN AN ACTION FOR JUST
37 COMPENSATION THAT IS BASED ON DIMINUTION IN VALUE PURSUANT TO
38 SECTION 12-1136, SUBSECTION A MAY BE AWARDED REASONABLE ATTORNEY
39 FEES, COSTS AND EXPENSES.

1 Sec. 3. Section 38-431.03, Arizona Revised Statutes, is
2 amended to read:

3 38-431.03. Executive sessions

4 A. Upon a public majority vote of the members
5 constituting a quorum, a public body may hold an executive
6 session but only for the following purposes:

7 1. Discussion or consideration of employment, assignment,
8 appointment, promotion, demotion, dismissal, salaries,
9 disciplining or resignation of a public officer, appointee or
10 employee of any public body, except that, with the exception of
11 salary discussions, an officer, appointee or employee may demand
12 that the discussion or consideration occur at a public meeting.
13 The public body shall provide the officer, appointee or employee
14 with written notice of the executive session as is appropriate
15 but not less than twenty-four hours for the officer, appointee
16 or employee to determine whether the discussion or consideration
17 should occur at a public meeting.

18 2. Discussion or consideration of records exempt by law
19 from public inspection, including the receipt and discussion of
20 information or testimony that is specifically required to be
21 maintained as confidential by state or federal law.

22 3. Discussion or consultation for legal advice with the
23 attorney or attorneys of the public body.

24 4. Discussion or consultation with the attorneys of the
25 public body in order to consider its position and instruct its
26 attorneys regarding the public body's position regarding
27 contracts that are the subject of negotiations, in pending or
28 contemplated litigation or in settlement discussions conducted
29 in order to avoid or resolve litigation.

30 5. Discussions or consultations with designated
31 representatives of the public body in order to consider its
32 position and instruct its representatives regarding negotiations
33 with employee organizations regarding the salaries, salary
34 schedules or compensation paid in the form of fringe benefits of
35 employees of the public body.

36 6. Discussion, consultation or consideration for
37 international and interstate negotiations or for negotiations by
38 a city or town, or its designated representatives, with members
39 of a tribal council, or its designated representatives, of an
40 Indian reservation located within or adjacent to the city or
41 town.

42 7. Discussions or consultations with designated
43 representatives of the public body in order to consider its
44 position and instruct its representatives regarding negotiations
45 for the purchase, sale or lease of real property.

1 B. Minutes of and discussions made at executive sessions
2 shall be kept confidential except from:

3 1. Members of the public body which met in executive
4 session.

5 2. Officers, appointees or employees who were the subject
6 of discussion or consideration pursuant to subsection A,
7 paragraph 1 of this section.

8 3. The auditor general on a request made in connection
9 with an audit authorized as provided by law.

10 4. A county attorney or the attorney general when
11 investigating alleged violations of this article.

12 C. The public body shall instruct persons who are present
13 at the executive session regarding the confidentiality
14 requirements of this article.

15 D. Legal action involving a final vote or decision shall
16 not be taken at an executive session, except that the public
17 body may instruct its attorneys or representatives as provided
18 in subsection A, paragraphs 4, 5 and 7 of this section. A
19 public vote shall be taken before any legal action binds the
20 public body.

21 E. Except as provided in section 38-431.02, subsections I
22 and J, a public body shall not discuss any matter in an
23 executive session which is not described in the notice of the
24 executive session.

25 F. Disclosure of executive session information pursuant
26 to this section or section 38-431.06 does not constitute a
27 waiver of any privilege, including the attorney-client
28 privilege. Any person receiving executive session information
29 pursuant to this section or section 38-431.06 shall not disclose
30 that information except to the attorney general or county
31 attorney, by agreement with the public body or to a court in
32 camera for purposes of enforcing this article. Any court that
33 reviews executive session information shall take appropriate
34 action to protect privileged information.

35 G. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A PUBLIC
36 BODY MAY RECEIVE LEGAL ADVICE FROM THE ATTORNEY FOR THE PUBLIC
37 BODY WHO DOES NOT REPRESENT ANY OTHER PARTY THAT WILL BENEFIT
38 FROM THE TRANSACTION IN EXECUTIVE SESSION, BUT FURTHER
39 DISCUSSION OR CONSULTATION OF RECORDS INVOLVING THE TAKING OF
40 PRIVATE PROPERTY FOR THE PURPOSES OF SLUM CLEARANCE AND
41 REDEVELOPMENT AND THE ULTIMATE CONTROL OR TRANSFER TO A PRIVATE
42 ENTITY SHALL BE HELD IN OPEN SESSION.

1 Sec. 4. Severability

2 If any provision of this act or its application to any
3 person or circumstance is held invalid, that invalidity does not
4 affect other provisions or applications of the act that can be
5 given effect without the invalid provision or application, and
6 to this end the provisions of this act are severable.

7 2. The Secretary of State shall submit this proposition to the voters
8 at the next general election as provided in article IV, part 1, section 1,
9 Constitution of Arizona.